

Initial Statement of Reasons
Title 8, Chapter 8,
Subchapter 2 Article 3 - 3.1

Article 3.1

The amendments to these regulations were adopted on an emergency basis to take effect on July 6, 2004. The amendments were then re-adopted effective November 3, 2004.

Specific Purpose

The proposed amendments to these regulations will improve upon the current regulations regarding the participation of self-insured employers in the alternative composite deposit posted by the Self-Insurers' Security Fund. The amendments will allow the Self-Insurers' Security Fund to request participation of self-insured employers who are excluded from participation in the composite deposit due to the eligibility requirements of the existing regulations, and will grant discretion to approve that request to the Manager of the Office of Self Insurance Plans, Department of Industrial Relations. Additionally, the amendments will require the latest, not the lowest, published credit rating to be used to determine eligibility to participate in the composite deposit.

Consistent with Labor Code Section 3701.8(b)(5), amendments will allow the Manager to provide the Self-Insurers' Security Fund with such financial information as is necessary to set the deposit assessments for self-insured employers participating in the composite deposit and to secure the composite deposit. Furthermore, the proposed amendments to these regulations will clarify the means by which the Self-Insurers' Security Fund may secure the composite deposit. The amendments clearly state that the Self-Insurers' Security Fund may secure the aggregate security deposit amount with its own indebtedness, which may be secured or unsecured, and will specifically authorize the Self-Insurers' Security Fund to repay such indebtedness from the annual assessments to its members.

Necessity

In 2002, the California Legislature authorized the establishment of the alternative security program, wherein the existing system of security deposits intended to cover outstanding self-insured workers' compensation liabilities was partially replaced by a composite deposit. With the new alternative composite deposit statute, Labor Code Section 3701.8, the existing regulations were amended to reflect the alternative security program's existence and specific regulations were adopted to implement the alternative security program. These regulations, adopted May 30, 2003, are in Article 3.1. The regulations in Article 3.1 now must be amended to provide more flexible criteria for participation in the composite deposit and to clarify the means by which the Self-Insurers' Security Fund may secure the composite deposit.

Section 15220 Participation in Alternative Composite Deposits

Section 15220 discusses eligibility for participation in the alternative composite deposit program. Section 15220(b)(12) is amended to specify that the Self-Insurers' Security Fund may submit a written request to the Manager of the Office of Self Insurance Plans that any private self-insured employer otherwise excluded from participation in the alternative composite deposit be included, and allows the Manager to grant the request; the written request shall identify the private self-insured employer and shall state the reasons that such private self-insured employer should be included in the alternative composite deposit. This provision clarifies Section 15220.3(h), which permits the Self-Insurers' Security Fund to propose "additions" to the alternative composite deposit, to explicitly allow the Self-Insurers' Security Fund to request participation of any private self-insured employer whom the Self-Insurers' Security Fund has concluded should participate but who is otherwise excluded under the eligibility requirements. It also explicitly confers on the Manager of the Office of Self Insurance Plans the authority to grant said requests.

Section 15220(d) is amended to require that when more than one credit rating is available for a self-insured employer, the most recently published, not the lowest, credit rating shall be used to determine the self-insured employer's eligibility for participation in the alternative composite deposit. This amendment will ensure that the self insured employer's eligibility is determined based on most recent information that accurately reflects the employer's financial condition.

Section 15220.1 Financial Summary

Section 15220.1 discusses the requirements to provide financial information to the Manager of the Office of Self Insurance Plans.

Section 15220.1(a) is amended to eliminate the reference to Form A4-7 (4/03) and to instead provide that the financial information and key financial items be submitted in a format approved by the Director. Section 15220.1(b) is deleted in its entirety to eliminate the specific list of items to be included on the Financial Summary Form. The purpose of these amendments is to give the Manager of the Office of Self Insurance Plans flexibility to obtain self insured employers' financial information in formats that may be readily shared with the Self Insurers' Security Fund as authorized by Labor Code Section 3701.8(b)(5), so that the Security Fund may calculate equivalent credit ratings.

Sections 15220.1(b) and (c) are amended to eliminate the references to Form A4-7 (4/03), and a new subsection (c)(3) is added to require the Financial Summary Form to be provided and submitted electronically beginning in 2005.

Section 15220.1(d), which specified the format of Form A4-7 (4/03), is replaced by a new subsection (d) to specify that the Manager of the Office of Self Insurance Plans may provide to the Self-Insurers' Security Fund any financial information needed to set the deposit assessments for self-insured employers participating in the alternative composite deposit program. This section is authorized by Labor Code Section 3701.8(b)(5), which states, "[i]n order to make a composite deposit proposal to the director and set the deposit assessment to be charged each fully participating self-insured, the Self-Insurers' Security Fund shall have access to the annual reports and other information submitted by all self-insuring employers to the director, under terms and conditions as may be set by the director, to preserve the confidentiality of the self-insured's financial information." The purpose of the provision is to specifically authorize the Manager of the Office of Self Insurance Plans to disclose financial information of self-insured employers obtained pursuant to subsection (b) to the Self-Insurers' Security Fund for the purpose of setting the deposit assessments.

Section 15220.3 Alternative Composite Deposit

Section 15220.3 discusses the requirements for the alternative composite deposit.

Section 15220.3(b) is amended to clarify that the Self-Insurers' Security Fund's own indebtedness, secured or unsecured, is an acceptable security instrument for the alternative composite deposit. Existing subsection (b) of 15220.3 contains a non-exclusive list of acceptable security instruments, but does not specifically list the Self-Insurers' Security Fund's own indebtedness.

A new Section 15220.3(j) is added to specify that the Self-Insurers' Security Fund shall submit the list of self-insurers that it proposes to include in whole or in part in the composite deposit with the written proposal that it submits to the Manager of the Office of Self Insurance Plans pursuant to existing Section 15220.3(d). New Section 15220.3(j) also provides that each self-insurer listed for inclusion shall have 60 days from notification of an increase in the security deposit or until July 1 of that year, whichever is sooner, to post the indicated increase in security deposit, and the increase shall be either included in the composite deposit or separately posted, as required.

Section 15220.4 Deposit Assessments by the Self-Insurers' Security Fund for Participants of the Alternative Composite Deposit

Section 15220.4 discusses the collection of deposit assessments from private self-insured employers.

Section 15220.4(c)(4) is amended to add Section 15220(d)(3) to the list of sections that may be used to determine a private self-insured employer's credit rating or equivalent credit rating.

A new Section 15220.4(d) is added to specify how the Self Insurers' Security Fund will calculate the deposit assessment in situations where the participating self-insurer has more than one credit rating from credit rating agencies and the ratings are not in agreement. This provision is authorized by Labor Code section 3701.8(b), which requires "reasonable consideration" of "creditworthiness" in determining the deposit assessment. Consistent with Section 15220(d), this amendment will require that when more than one credit rating is available for a self-insured employer, the most recently published, not the lowest, credit rating shall be used in calculating the assessment. This amendment will ensure that the "creditworthiness" factor is based on most recent information that accurately reflects the employer's financial condition.

Existing Section 15220.4(d) is re-lettered (e).

New Section 15220.4(f) is added to further clarify that the Self-Insurers' Security Fund may repay any indebtedness incurred as contemplated by amended Section 15220.3 from the annual deposit assessment. This section further specifies that at the time the annual deposit assessment is determined, it may not be known whether any such indebtedness will be incurred or the amount or repayment terms thereof, and accordingly, a portion of the annual deposit assessment may be contingent upon the actual incurrence of such indebtedness and delayed until the amount and repayment terms are known.

New Section 15220.4(g) is added to specify that if the Manager of the Office of Self Insurance Plans increases the security deposit requirement of a participating self-insured employer after the Self-Insurers' Security Fund has issued the annual assessment for the alternative composite deposit, the amount of the increase may be addressed through a supplemental assessment or by the posting of an additional deposit separately as a partially participating self-insurer. The purpose of this provision is to explicitly authorize the Manager of the Office of Self Insurance Plans to obtain any

increase in requisite security that becomes known after the annual composite assessment has issued by either a supplemental assessment or, in the case of partially participating entities, an additional deposit to be posted separately.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS OR DOCUMENTS

The Department did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

ALTERNATIVES TO THE REGULATION CONSIDERED BY THE AGENCY AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

No other reasonable alternatives were presented or considered by the Department.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Department has not identified any reasonable alternatives or that have otherwise been identified and brought to the attention of the agency that would lessen any adverse impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The Department is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. [Individual private self-insurers may find the new deposit assessment to be higher than current costs for providing individual security deposits. However, because of the need to increase the pre-existing deposit shortfall fund, the costs would have increased substantially even if the composite deposit program were not enacted. Even so, any cost increases should be offset by the release or reduction of individually posted security deposits to participating self-insurers, thus making other assets available to those employers. In addition, the deposit assessments are expected to be reduced over time.] Costs are determined by the Self-Insurers' Security Fund's Board of Trustees, not the Department of Industrial Relations, pursuant to Labor Code Section 3701.8.